

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER FOUNDATION,) NO. 07-CV-05278-SI

Plaintiff,) **DECLARATION OF THOMAS H.**
)
) **STEELE**

V.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,) Date: May 23, 2008
) Time: 9:00 a.m.
) Courtroom: 10, 19th Floor

Defendant

1. I am a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. I joined the law firm of Morrison & Foerster in 1976 and am a partner in the firm's San Francisco and Denver offices. My California office is located at 425 Market Street, San Francisco, California, 94105. I currently chair the firm's West Coast State & Local Tax Practice Group.

3. I received my B.A. degree from the University of Virginia in 1970, and my Juris Doctor degree from the University of California at Davis, School of Law in 1976.

4. I focus my practice on state and local tax matters and have been involved in a number of significant court litigations in that field. For example, I was counsel of record for Farmer Bros. in a United States Supreme Court proceeding involving its successful constitutional challenge to California's dividend received statute.

1 5. I also have coauthored three BNA Tax Portfolios, numerous articles involving taxes
2 and/or the Commerce Clause of the U.S. Constitution. I have also spoken or taught various classes
3 relating to state and local tax issues at seminars both in California and across the country.

4 6. In general, I also act as the billing attorney for those matters for which I am
5 responsible.

7 7. In the course of my state and local tax litigation practice, on a number of occasions I
8 have represented clients seeking government information through the state freedom of information
9 acts or similar acts to supplement civil discovery. For example, I am currently involved in
10 litigation in the State of New York seeking government information from the New York
11 Department of Taxation and Finance under that state's Freedom of Information Law ("FOIL") in
12 which we expect to file in the coming weeks a New York Supreme Court petition challenging the
13 Department's partial denial of our FOIL request.

15 8. Under our firm procedures, we bill clients based upon a number of factors. A
16 principal factor in preparation of such bills (in many cases) is the hourly rate of the lawyer
17 performing the work and the time spent on the project. For work involving requests under state
18 freedom of information acts or similar state statutes in which I have been involved, we have
19 employed the same hourly rates used for other legal work, *i.e.*, there is no special hourly rate for
20 such work.

22 9. Morrison & Foerster's management recommends billing rates that management
23 believes are consistent with rates of similar firms. Based on my experience with other law firms of
24 similar scope and size, I believe our billing rates are generally consistent with the prevailing hourly
25 rates in the San Francisco Bay Area for lawyers of comparable education, expertise, and
26 experience.

27 10. After a careful review of the plaintiff's attorneys' declarations in this case, the
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1 hourly rates asserted in the declarations appear to be comparable to the hourly rates used by our
2 firm in preparing bills for clients in connection with our state freedom of information act work.

3 I declare under penalty of perjury of the laws of the State of California that the foregoing is
4 true and correct to the best of my knowledge and belief.
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6 Executed May 9, 2008 in San Francisco, California.
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8 Thomas H. Steele
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